

**RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
MINUTES**

**Wednesday
April 2, 2008
11:00am – 3:00pm**

**Transportation Commission Room
2701 Prospect Ave.
Helena, Montana**

COUNCIL MEMBERS PRESENT: Chairman Mike O'Hara, Mike Scanlan, Russ Hobbs, Larry Bonderud, Carla Allen, Doug Miller, Jim Lynch, Bill Fogarty, Evan Barrett and Dan Bucks

COUNCIL MEMBERS ABSENT: Rep. Mike Milburn, Sen. Ken Hansen, Ron de Yong

REPRESENTING COUNCIL MEMBERS: Cort Jensen for Ron de Yong

AGENCY REPRESENTATIVES AND GUESTS: Mike Opar, Will Roehm, Lola Raska, Zia Kazimi, Hal Fossum, Mary Ann Fiehrer, Larry Finch, Gary Schlaeger, Patty Schlaeger, Dick Turner, Barbara Ranf, Jim Curry, Chris Aageson, Spook Stang, Todd O'Hair and Tim Reardon.

RSCC ASSISTANCE: Terry Whiteside, Gloria O'Rourke

1.0 MEETING OPENING

Chairman Mike O'Hara called the meeting to order and requested roll call as well as introductions from the audience.

2.0 APPROVAL OF MINUTES

Chairman O'Hara requested approval of the January 9th, 2008 meeting minutes. Larry Bonderud motioned to approve; Russ Hobbs seconded the motion. All voted in favor of approval.

3.0 NEXT STEPS FOR THE RSCC

Jim Lynch, State Director, Montana Department of Transportation, reviewed the statutory requirements that describe what the RSCC is to accomplish. Requirements were discussed and action items set forth.

Statutory Requirement

(a) promote rail service competition in the state that results in reliable and adequate service at reasonable rates;

(b) develop a comprehensive and coordinated plan to increase rail service competition in the state;

(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation

RSCC Progress and Action Items

This is the overall purpose of the RSCC and is ongoing.

The four subcommittees (Ag, Coal/Mining, Forest/Paper and Intermodal) have been meeting to gather information and identify problem areas. To move to the next step of developing a comprehensive plan, each subcommittee will complete a report prior to the next RSCC meeting. The report will be a template provided by Montana Dept. of Transportation.

Montana's rail taxation practices were addressed in September 2006 by the RSCC Taxation Subcommittee. Minutes of the meeting are available on the RSCC website.

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practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;

(d) develop various means to assist Montanans impacted by high rates and poor rail service;

This will be addressed within the RSCC comprehensive plan.

(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;

This will be addressed within the RSCC comprehensive plan and through information provided by the Port/Intermodal Subcommittee.

(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;

Dick Turner, Montana Department of Transportation Chief, Multimodal Planning Bureau will provide updates to the RSCC on this item.

(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition;

Dick Turner will provide this information to the RSCC at every meeting.

(h) act as the state's liaison in working with Class I railroads to promote rail service competition; and

Above previous items must be accomplished prior to acting on this item.

(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.

Above previous items must be accomplished prior to acting on this item.

The Council shall report to the 2009 Legislature on its activities and its progress in performing the duties listed above.

Ongoing

The content of the form for the subcommittees to complete was reviewed:

- Title (of subcommittee)
- Brief Description: This space is for the subcommittee to describe the purpose of its committee and the problems and challenges that have been identified in its particular sector.
- Benefits to Increased Competition: What benefits does the subcommittee envision if competition is increased?
- Implementation Needs (analysis, legislation, etc): What would be needed to implement solutions to the problems, i.e., funding, coordination, legislation, etc.
- Estimated Cost: (if available)
- Additional Comments: Additional comments regarding the plan as the RSCC moves forward.
- Submitted by:
- Date:

Chairman O'Hara asked for each subcommittee to meet prior to the next RSCC meeting and fill out as much of this information as possible. Chairman O'Hara noted some solutions will be common to all four subcommittees and some will be unique to that particular area.

4.0 TECHNICAL ASSISTANCE UPDATE (Terry Whiteside)

Terry Whiteside provided an update to the RSCC on the following items. His report is available on the RSCC website.

- Monopoly Madness – In 1980 there were over 40 railroads. Today there are only four with each having its own regional monopoly.
- A study completed by Escalation Consultants revealing the average 2007 cost of captivity by commodity per ton. The captive shipper rate is much higher than the non-captive rate. Chemical, food and paper product shippers paid higher rates overall than farm and coal shippers.
- Updates on several fuel surcharge cases pending
- Successful Rail Shipper Day, March 12, 2008
- Rail captive shipper legislative support reaches record levels
- Talking points to refute the quote “Any change that helps shippers is bad for the railroads.”
- Summary of STB activities
- Rails storing cars all over Montana
- Churchill Project

5.0 INTERMODAL STUDY PRESENTATION (Libby Ogard)

This study has not yet been completed.

6.0 WORKING GROUP UPDATES

6.1 Forest/Paper (Russ Hobbs, Chair)

Russ Hobbs reported the Forest/Paper Subcommittee has held two calls and identified several issues of interest:

- Lumber producers are interested in obtaining access to UP.
- Consideration of forming a shipper’s coop
- Mining/refining sector needs better service (not as concerned about rates.)
- Industrial shippers may have different issues – need more feedback.

Patty Schlaeger said she could provide international information from people who have been addressing similar needs in creative ways. This information would provide the subcommittee a broader base of information regarding minerals and other commodities as well.

6.2 Ports/Intermodal (Bill Fogarty, Chair)

Chair Bill Fogarty said his subcommittee is anxiously awaiting the results from the MDT study as it will no doubt contain information of value for the ports/intermodal sector. The study will be a key component when building the RSCC comprehensive plan.

6.2 Agriculture (Carla Allen, Chair)

Carla Allen reported the Ag Subcommittee has held two calls to identify problems and issues in the agriculture shipping arena. Terry Whiteside has agreed to write up potential

solutions to address the problems. Carla expects to hold two or three conference calls prior to the next RSCC meeting.

6.3 Coal (Evan Barrett, Chair)

Evan Barrett provided a summary of the most recent Coal Subcommittee conference call. Evan explained that as Mike Scanlan is not a resident of Montana, he cannot officially serve on the RSCC; however Mike can serve as a member of the subcommittee. Evan said progress is being made in finding someone to represent coal shipping expertise on the RSCC.

Evan mentioned he had recently received a call from a company interested in mine expansion in Montana which would involve reaching markets in the Midwest. The company representative said the cost of utilizing BNSF for transportation was so high that Montana coal was not competitive. If coal cannot be transported competitively expansion cannot occur. Barbara Ranf, BNSF, contacted the appropriate person within BNSF and talks are in progress.

Evan Barrett reminded everyone the RSCC had contracted with Scott Rickard, Center for Applied Economic Research, MSU- Billings, to conduct research projects for the RSCC. The RSCC previously approved a study of the relationship of coal severance taxes on the delivered cost of Montana coal as compared to Wyoming. Rickard defined the study as follows:

An estimate of the percentage of total delivered cost of Montana and Wyoming coal that state coal severance taxes represent. This would involve quantifying total delivery costs, which includes both rail transport costs and severance taxes, for a set of comparable standardized size/distance hauls. Data would come primarily from MT DOR, the STB Weigh Bill sample, a subcontract to develop some additional data and past research that has been conducted on comparing the tax impacts of locating a coal-fired power plant in either state. This study would clarify if coal severance rates make coal non competitive or if it is due to other costs.

The study will proceed immediately and be completed before the end of June. The cost for the study is estimated at \$27,475 which will leave a balance of about \$13,000 in the contract.

The \$13,000 is fiscal year 2007 money and has been obligated for studies through MSU-Billings, but needs to be expended. A motion was made by Larry Bonderud for the RSCC to delegate authority to a subcommittee to make the decision to select research that should be done with the remaining balance of funds. Carla Allen seconded the motion. All voted in favor. Subcommittee members are Larry Finch, Jim Lynch, Mike O'Hara, Evan Barrett and Russ Hobbs. A conference call will be set up for the discussion and decision.

7.0 RAIL UPDATES

7.1 Union Pacific (Evan Barrett)

Dan Harbeke, of Utah, will replace Charlie Clark.

7.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud reported the acquisition of ME is continuing to progress. Larry suggested the RSCC meet with officials of the Canadian Pacific railroad in the future. Larry feels it is important for the Council to learn about various railroads and various issues each face.

7.3 Montana Rail Link (Evan Barrett)

Nothing to report at this time.

7.4 BNSF Railway (Barbara Ranf)

Barbara Ranf reported the idle rail cars in Montana are due from a national slow down in traffic. Barbara said BNSF does not make money when cars are parked and would prefer to have them in operation. Barbara also said BNSF still pays taxes on the cars, even though they are idle.

Barbara reported that in Montana during 2006/2007, BNSF had a 45% decline in accidents with 19 fewer derailments and collisions. BNSF is working with Montana Department of Transportation to update the state's rail plan. Barbara noted the most product shipped out of Montana is coal, while the largest incoming products are industrial.

7.5 Central Montana Railroad (Carla Allen)

Carla Allen said she had nothing to report on CMR other than "business as usual."

7.6 Watco, Yellowstone, Mission Valley, others

Evan Barrett said Patriot Rail, which recently purchased the Butte/Anaconda line announced a contract for using the roundhouse in Anaconda for rail car repair. The new Butte/Anaconda railroad is also planning to utilize the industrial yards near Mill Creek and may be considering a transloading facility. Plans are to aggressively market the Montana site for a business location for warehousing, distribution, etc.

8.0 NEXT COUNCIL MEETING

8.1 Meeting Date and Location

The next meeting date for the RSCC will be June 18th, 2008, in Helena, at the Montana Department of Transportation Commission Room. The meeting will begin at 10:00am instead of 11:00am.

8.2 Agenda

The following items are slated for the June 18th meeting agenda:

- Begin the Comprehensive Plan. As the main purpose of the meeting will to begin the comprehensive plan, a facilitator will be present to assist with the process.
- Dick Turner's report from MDT to inform the RSCC on various efforts and partnerships with other states and federal agencies to promote rail service competition.
- Update on studies either completed or near completion, i.e., Scott Rickard and Libby Ogard.

9.0 COMMENTS OR ISSUES FROM COUNCIL MEMBERS

Russ Hobbs attended Rail Shipper Day in Washington, DC, as a guest of Watco. Russ felt the experience was very educational and encouraged other members to attend in the future. Russ emphasized that while legislators were receptive to shippers, they were also aware of the railroad's concerns. Russ was told a compromise needs to be reached and solutions found as a result of the shippers and railroads coming together and resolving the issues themselves. Dan Bucks said the general public must be invited to the conversation so that they will not be bearing the cost burden.

10.0 FORMAL PUBLIC COMMENT PERIOD

Director Jim Lynch invited an attorney for Montana Department of Transportation, Tim Reardon to review the legal ramifications of public comment during a Council meeting.

Mr. Reardon explained that when the agenda is published, it needs to include clearly both items that the council will discuss but not act on and issues upon which the council could take action. Opportunities for public comment may be provided at any point during a meeting. It is however, important that public comments and those who make them be recorded. The agenda should reflect specific opportunities for public comment. RSCC members were encouraged to be more active in placing discussion and/or action items on the agenda.

Gloria will make the recommended adjustments to the agenda and Tim Reardon will review it prior to the next meeting.

11.0 ADJOURNMENT

With no further business, Chairman O'Hara requested a motion to adjourn. Evan Barrett moved to adjourn, Larry Bonderud seconded; all voted in favor to adjourn.